

# the ethics of job discrimination essay



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This chapter focuses on the Continuing inequalities of income and occupational status discrimination against women and minorities in the workplace and discusses the proposed remedies for this, especially Affirmative Action policies. Affirmative action is one of the most controversial issues in our society as is illustrated by recent controversy about admission policies at the University of Michigan. In *Gratz v. Bollinger* in 2005 the U. S. Supreme court ruled University of Michigan’s undergraduate admissions policy which gave a fixed number of points to applicants in targeted groups illegal stating it to be not “ narrowly tailored” and weighed race too heavily. At the same time, in *Grutter v. Bollinger* the Court upheld University of Michigan’s law school admissions policy as “ flexible enough to ensure that each applicant is evaluated as an individual and not in a way that makes race or ethnicity the defining feature of the application.”

The majority in this case reasoned that, due to its political and economic utility, “ diversity is a compelling state interest that can justify using race in university admissions. ” Notably, more than five dozen major American Corporation corporations argued, in an amicus brief, that “ individuals who have been educated in a diverse setting are more likely to succeed” in business. Dissenting, Justice Thomas argued that showing preference to minorities was harmful “ racial discrimination” “ Discrimination” in its original sense means “ to distinguish one object from another.”

Discrimination may be defined as “ the wrongful act of distinguishing illicitly among people not on the basis of individual merit, but on the basis of prejudice or some other morally invidious attitude. ” Such morally invidious

discrimination has three key features: 1. not being based on individual merit; 2. deriving from some morally unjustified attitude; and 3. having a harmful or negative impact on the interests of those against whom it is directed.

Harmful impacts of job discrimination include, most importantly, loss of jobs, promotions, and pay. Past and present victims include religious groups, ethnic groups, racial groups, and sexual groups. Further the chapter outlines distinctions between isolated and institutionalized discrimination; and between intentional and unintentional discrimination. Initial movements against and attempts to remedy job discrimination through Equal Opportunity measures focused principally on instances of isolated intentional discrimination.

Current Affirmative Action policies attempt to address problems of institutionalized unintentional discrimination. Equal Opportunity remedies are unable to adequately address these forms of discrimination because it is generally impossible to tell, for a given individual, whether that individual's loss of the job, raise, or promotion was due to discrimination or random factors. Statistical measures of what happens to groups in hiring, compensation, and promotion, however, show that institutionalized unintentional discrimination still exists.

Average income comparisons, lowest income group comparisons, and desirable occupation comparisons continue to show differences that are not wholly explainable in terms of educational and other merit-related factors. Furthermore statistical measures indicate that, for most disadvantaged groups, discrepancies are actually increasing and current and expected

trends also seem unfavorable to women's and minorities' prospects.

Discrimination in Employment can be argued to be morally wrong on utilitarian grounds, on Kantian grounds, and by appeal to considerations of justice.

The utilitarian argument is as follows: Social productivity is optimized to the extent jobs are awarded on the basis of competency or "merit." Race, sex, and religion, being generally unrelated to job performance, have nothing to do with merit. Therefore, assignment of jobs on these bases is inefficient, and (on Utilitarian principles) morally wrong. Liberal critics of this argument respond that there's more to the general welfare than economic efficiency, and that racial and sexual discrimination may be warranted in cases where other factors outweigh whatever losses in productivity they cause.

Conservative critics of the utilitarian argument maintain that the division of labor along sexual lines is most efficient and best promotes the general welfare because the natural (nurturing, sensitive, emotional) abilities of women suit them best to childcare and the natural (aggressive, competitive, rational) abilities of men suit them best to exercise authority and control over business and financial matters. According to the Kantian argument, discrimination is wrong because it treats people, as ends, but not merely as means.

At a minimum, this principle means that each individual has a free right to be treated as a free person equal to any other person and that all individuals have a correlative moral duty to treat each individual as a free and individual person. Alternately, Kantians may argue that discrimination is a non

universalizable practice: those who discriminate would be unwilling to be similarly discriminated against themselves. Effects of discrimination continue to exist and be continued by various practices widely recognized as discriminatory.

These include recruitment practices such as word of mouth referrals of present employees; screening practices requiring job qualifications irrelevant to the task; or depending on biased interviewers; promotion practices relying on tracking systems, e. g. , seniority, and reliance on subjective recommendations of biased supervisors; conditions of employment that involve payment of unequal wages to people doing essentially the same work; discharge policies including firings based on negative recommendations of biased supervisors and reliance on seniority for determining layoffs.

Sexual harassment a form a discrimination directed primarily at women and generally recognized as immoral due to its infliction of psychological harm on the harassed individual; its violation of the victim's most basic rights to freedom and dignity; and its unjust use of the unequal power that an employer or supervisor wields over an employee. Equal Opportunity Commission (EEOC) guidelines enacted in 1978 attempt to define what constitutes sexual harassment and impose strict liability on employers for harassment by their employees.

Other groups besides women and minorities are liable to be discriminated against and victimized by false labels in the workplace: law currently protects older workers and disabled workers. As yet unprotected groups who

aspire to legal protection include homosexuals and the overweight. Equal Opportunity policies aim to combat the continuing practice of wrongful discrimination by negative means, namely prohibitions against sexually and racially discriminatory practices, aiming to ensure that employment decisions are blind.

Affirmative Action policies, by contrast, aim to combat continuing effects of discrimination through positive measures that aim to achieve more representative distributions of women and minorities in the workplace. The principal means of implementing Affirmative Action is utilization review which compares the representation of minorities and women in an organization with their representation in the available labor pool, across nine categories. Underutilization is deemed to be present when the percentage of minority or female in any given category is less than in the available labor pool.

If underutilization is found, then the firm must establish “ specific and measurable goals and timetables” designed to correct this and undertake special efforts to recruit women and minorities so as to meet these goals and timetables. According to the compensatory justice argument, white males have intentionally and unjustly wronged women and minorities through past discrimination and, consequently, women and minorities are justly entitled to be temporarily accorded reverse preferences in admissions, hiring, and promotions, where they had previously been discriminated against.

Though this disadvantages white males, it is not unjust, since white males benefited from the past discrimination. Opponents of this argument reply (1)

that present white males are not the parties who intentionally and unjustly wronged women and minorities and (2) present women and minorities are not the ones who were intentionally wronged; therefore, no compensation is due. According to the utilitarian argument for Affirmative Action, Affirmative Action promotes the general welfare by undoing the harmful effects of past discrimination, especially impoverishment.

Other utilitarians counter that since race and sex are irrelevant selection criteria, having nothing to do with merit, Affirmative Action diminishes the general welfare by decreasing economic productivity. Utilitarian defenders of Affirmative Action may, in turn, reply that race is highly correlated with need, and distribution according to need is most beneficial. The equal justice argument holds that the only criteria relevant to the distribution of benefits and burdens are ability, effort, contribution, and need, agreeing with opponents of Affirmative Action that sex and race are not relevant criteria.

However statistics show that jobs in our society are still distributed on the basis of sex and race in ways that disadvantage women and minorities: Affirmative Action, therefore, serves to counteract the enduring practice of unintentional institutionalized discrimination. This is the strongest argument favoring Affirmative Action. Velasquez's final conclusion is twofold: Affirmative Action, is a morally permissible means to achieve social justice; but Affirmative Action it is not morally required as a means to achieve social justice.

Overall morality aside, there are legitimate worries: that weighting race and sex very heavily will result in assignments of tasks to unqualified people;

that in critical occupations where human interests hang mightily in the balance merit should be the only selection criterion; that weighting sex and race in socially important decisions makes us more race and sex conscious, not less so.

Implementation guidelines that address these concerns require minimum levels of competency to insure that tasks are not assigned to unqualified individuals; require that less race or sex should not offset competency differences in critical occupations; require that preferences should be extended to minority and women candidates only to redress underutilization; and require accommodation of the special needs of women and minorities in the workplace to be undertaken along with Affirmative Action based preferences.

Comparable pay for jobs of comparable worth is a radical proposal for redressing sex-based earning differentials: where Affirmative Action tries to get women into higher paid positions, comparable pay proposes to make positions women already hold higher paid. Implementation would require rating each job for compensation-worthy features such as effort, productivity, and accountability and fixing compensation on the basis of these ratings. The justification is that employees who are equal in all respects relevant to compensation-worthiness should be equally compensated.

Objectors reply that the labor market is the most appropriate determiner of compensation-worthiness; that assigning points to jobs would be a bureaucratic nightmare; and that women can apply for higher paying "male"



jobs if they want, but choose not to based on other advantages associated with traditional female occupations. Advocates of comparable pay counter that “woman’s work” is lower paid because women do it – for historical discrimination-based reasons – not because of impersonal labor market factors of supply and demand.

Morality aside, Velasquez concludes, diversity in the workplace makes good business sense. Since white males represent a rapidly shrinking proportion of the workforce, women and minorities have to be accommodated to meet staffing needs. Consequently, firms that effectively accommodate the special needs of women and minorities will, in the future, enjoy increasing competitive advantages in meeting their staffing needs over those which don’t.